

REMARKS/ARGUMENTS

The undersigned greatly appreciates the courtesies extended by Examiner Jean Janvier during the personal interview with Mr. Rich Ekstrom on August 25, 2005 at the U.S. Patent and Trademark Office. During the interview, Mr. Ekstrom gave an overview of the health club industry, discussed the problem of retention in this industry, and outlined the advantages of the present invention. Applicant also distinguished the health club industry from the retail grocery industry, as discussed in U.S. Patent No. 6,516,302 to Deaton. The issue of retention verses loyalty was also discussed.

Claims 1-22 in the case are pending. Claims 1, 2, 5, 9, 12, 13, 15, 17, 18, 21, and 22 have been rejected under 35 U.S.C. §102(b) as being anticipated by Deaton. Claims 3, 4, 6-8, 10, 11, 14, 16, 19, and 20 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Deaton. Additionally, the claims have been objected to for various informalities which are addressed in the present response. With regard to the claim terminology "non-users", Applicant submits that this term is commonly used in the health club industry to refer to existing members who never use the club and those who are infrequent users. The term is further defined in the specification at page 17, paragraph 0078.

In an effort to more clearly distinguish the present invention from the art cited, independent Claims 1, 12, 21, and 22 are amended herein to state that the text messages to club members comprise content selected from a group consisting of a *wellness tip, an interest survey, and an offer for personal fitness instruction*. With regard to the prior art, Deaton relates to a targeted couponing/marketing program applicable in a *retail industry*, and does not disclose, teach or suggest the communication of content other than coupons and purchase incentives to customers. The targeted couponing described in Deaton is

intended to establish loyalty in a purely *incentive-driven* retail industry such that customers faced with an otherwise "free choice" will opt for one retail store over another.

Unlike loyalty, retention is about motivating individuals to renew a contractual relationship with an organization—a health club in the present case. As discussed during the interview, the health club industry is *relationship driven*. As such, the key to retention lies in establishing meaningful and long-lasting relationships with members. This is not something which can be effectively accomplished by targeted coupons or other purchase incentives. Instead, Applicant has determined through industry acceptance of its invention that lasting *relationships* are best built and maintained by means of periodic communications sent to club members, and which are customized based on each member's level of attendance. The end result of this relationship building is reduced attrition through fewer membership cancellations.

In the present Office Action, the examiner agrees that Deaton fails to disclose the communication of text messages which contain specific content (such as a wellness tip). However, the examiner further states that this type of communication is "commonly being practiced" in the health club industry. As an example, the examiner cites the sending of invitations to "new users" to come try the club for a limited period, and the mailing of marketing material to homes of non-members and existing members.

As an initial matter, the present system and method does not communicate with non-members—unlike the couponing programs commonly used in the retail grocery industry. Retention is achieved only through communications with existing members. The goal of the present invention is to reduce membership attrition by reducing cancellations of existing club members. Contrary to that suggested by the examiner, the invention is not a method or system for *prospecting* non-members via telemarketing and "free passes".

Additionally, the claimed text messages are sent to all non-users, low users, and regular users of the health club. In Deaton, customer information is obtained only after a qualifying purchase is made by the customer (e.g., using a check or credit card). For these customers, Deaton can collect useful data and target its couponing/marketing efforts to influence customer loyalty. Those "attending" the retail store *and not making a qualifying purchase* (e.g., cash purchase or no purchase) will fall outside of Deaton's loyalty program. If all customer are "members", as suggested by the examiner, then Deaton is *entirely ineffective* for "retaining" this particular population of users.

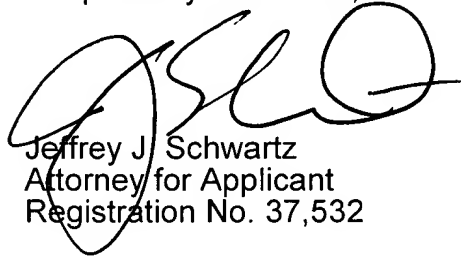
Because of the fundamental and inherent differences between the retail grocery industry and the health club industry, the present invention does not have this drawback and limitation. In the health club industry, all new members are accounted for—most typically in the form of a term-based contract. There are no such contracts in the retail grocery industry, as discussed in Deaton. According to the present invention, ALL members can be targeted for retention through relationship-building communications; i.e., customized text messages including either a *wellness tip*, an *interest survey*, and/or an *offer for personal fitness instruction*. The couponing program of Deaton cannot achieve this—nor does it aim to. Instead, the issue addressed in Deaton is customer loyalty in an entirely unrelated retail industry (as opposed to service industry) focused on a mass population. Deaton simply provides purchase incentives, and does not generate *good will* through the communication of useful text messages intended to build long-lasting relationships.

For these reasons discussed above, Applicant respectfully request that all of the claims in the case are in condition for allowance. Such action is therefore respectfully

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requested at an early date. If the examiner believes that issues remain for discussion, he is invited to contact the undersigned at the telephone number indicated below.

Respectfully submitted,



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